

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIMPLIFICATION LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 03-355 (JJF)
	)	C.A. No. 04-114 (JJF)
BLOCK FINANCIAL CORPORATION,	)	CONSOLIDATED
	)	
Defendant.	)	

**UNOPPOSED MOTION TO AMEND COMPLAINT AND TO JOIN PARTY**

Plaintiff Simplification, LLC (“Simplification”), by its attorneys and pursuant to Fed. R. Civ. P. 15(a) and 21, hereby moves for leave to file a Second Amended Complaint for patent infringement and to join H&R Block Digital Tax Solutions, Inc. (“Digital Tax Solutions”) as a defendant. The grounds for this motion are as follows:

1. Leave to amend a pleading shall be freely given when justice so requires. *See* Fed. R. Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating that leave should be freely granted in absence of undue delay, bad faith, dilatory motive, or undue prejudice to opposing party); *Coventry v. United States Steel Corp.*, 856 F.2d 514, 519 (3d Cir. 1988) (holding that potential for undue prejudice to non-moving party is “touchstone” of inquiry). A general presumption exists in favor of allowing a party to amend its pleadings. *See Boileau v. Bethlehem Steel Corp.*, 730 F.2d 929, 938 (3d Cir. 1984) (citing *Foman*, 371 U.S. at 182 (“If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.”))).

2. Rule 21 further provides that the Court may, on just terms, add a party at any time. *See* Fed. R. Civ. P. 21. The standards for granting motions for leave to amend are the

same under both Rule 15 and Rule 21, and the rules are interpreted liberally to allow amendment of pleadings. *See, e.g., Wolfson v. Lewis*, 168 F.R.D. 530, 533 (E.D. Pa. 1996).

3. This action is the consolidation of two suits against Defendant Block Financial Corporation (“Block Financial”), alleging infringement of U.S. Patents Nos. 6,202,052 and 6,697,787 (collectively “the patents-in-suit”). *See* Civil Action No. 03-355 (‘052 patent); 04-114 (‘787 patent). The underlying actions had been stayed since November 24, 2003 and May 7, 2004, respectively, pending re-examination of the patents-in-suit by the United States Patent and Trademark Office. This Court reopened and consolidated the two actions on November 2, 2007.

4. The initial Complaints in these actions alleged infringement of the patents-in-suit by Block Financial through the making, use, sale, and offer for sale of tax preparation software, including its “TaxCut” software, and the method utilized by TaxCut.

5. Grounds for naming Digital Tax Solutions as a defendant did not exist when the Complaints were filed. Following the reopening of the litigation, Simplification learned that while the stay was in place, Block Financial had transferred its tax preparation business and assets to Digital Tax Solutions effective December 31, 2004. These assets included the TaxCut family of software as well as the software used by Block Financial to provide online tax preparation (“OTP”) services. *See* Exhibit C (screen capture from TaxCut.com). The Second Amended Complaint also adds language clarifying that the accused products include, but are not necessarily limited to, both TaxCut and the OTP software.

6. Block Financial confirmed the transfer of ownership and responsibility for the accused products in interrogatory responses served January 23, 2008. *See* Exhibit D (response to Interrogatory No. 26). As the owner and publisher of the accused software, Digital

Tax Solutions would be accountable for infringement occurring after the date of the transfer<sup>1</sup> and is therefore a necessary party to this action. *See* 35 U.S.C. § 271.

7. There is no prejudice to Block Financial from the proposed amendments. “Prejudice” involves the serious impairment of a party’s ability to present its case. *Dole v. Arco Chem. Co.*, 921 F.2d 484, 488 (3d Cir. 1990). No such impairment is present here. The proposed amendments concern the patents and technology already in suit and merely add Digital Tax Solutions, responsible for the accused software since January 2005, as a defendant to ensure that the correct parties are named. Furthermore, Block Financial has provided information during discovery about Digital Tax Solutions, and both the TaxCut and OTP software. Fact discovery in this action does not close until May 30, 2008.

8. Nor has there been any undue delay. Digital Tax Solutions obtained ownership of the accused software from Block Financial during the stay of this action. The Court reopened the action on November 2, 2007, and Block Financial’s interrogatory responses confirming the transfer of interest to Digital Tax Solutions were served on January 23, 2008. Under the Court’s December 7, 2007 Scheduling Order, the deadline for moving for leave to amend pleadings or to join parties is February 8, 2008. *See* Scheduling Order (D.I. 49). This motion is therefore timely.

9. Pursuant to Local Rule 15.1, a copy of the proposed Second Amended Complaint is attached as Exhibit A.<sup>2</sup> A redlined copy of the proposed Second Amended

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<sup>1</sup> For example, it is apparent that versions of TaxCut and OTP software for the 2004 tax year containing an Auto Entry feature (which automatically imports at least W-2 and 1099 information from participating employers and financial institutions) would have been sold, offered for sale, or used after Digital Tax Solutions took ownership on December 31, 2004. *See* Exhibit D (responses to Interrogatory Nos. 16, 23) (describing first dates of sale and use for each version of TaxCut or OTP software). Moreover, back editions of TaxCut software from 1992-2006 are currently available for sale on Digital Tax Solutions’ TaxCut website.

Complaint indicating the manner in which it differs from the First Amended Complaint is attached as Exhibit B.

WHEREFORE, for the reasons stated above, Simplification respectfully requests that the Court enter an order granting leave to join H&R Block Digital Tax Solutions, Inc. as a defendant in this action, and granting leave to file Simplification's Second Amended Complaint.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Julia Heaney (#3052)*

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February 8, 2008  
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<sup>2</sup> Simplification filed a First Amended Complaint (D.I. 10) in the 03-355 action, and an initial Complaint (D.I. 1) in the 04-114 action. As the actions have since been consolidated under the 03-355 action, *see* D.I. 30 (04-114 docket), Simplification's proposed Second Amended Complaint in the 03-355 action reflects both the original allegations in the 04-114 Complaint and the changes proposed herein.

**RULE 7.1.1 CERTIFICATE**

Pursuant to D. Del. L.R. 7.1.1, this is to certify that counsel for Simplification have discussed the subject matter of this motion with counsel for defendant Block Financial Corporation, and defendant's counsel stated that they will not oppose the motion.

*/s/ Julia Heaney (#3052)*

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Julia Heaney

**CERTIFICATE OF SERVICE**

I hereby certify that on February 8, 2008, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following:

John W. Shaw  
Karen E. Keller  
YOUNG CONAWAY STARGATT & TAYLOR, LLP

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on February 8, 2008 upon the following individuals in the manner indicated:

**BY E-MAIL**

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